255964

PUBLIC NOTICE – ALL INTERESTED PARTIES

FMCSA'S
FINDING OF NO SIGNIFICANT IMPACT
FOR

"Certification of Safety Auditors, Safety Investigators, and Safety Inspectors" Interim Final Rule

In accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), the Council of Environmental Quality Regulations dated 28 November 1978 (40 CFR parts 1500-1508), and DOT Order 5610.1C, Procedures for Considering Environmental Impacts, September 18, 1979, and as amended on July 13, 1982, and July 30, 1985, this action has been thoroughly reviewed by the Federal Motor Carrier Safety Administration (FMCSA). It has been determined by the undersigned that this project will have no significant impact on the human environment. Therefore, no Environmental Impact Statement will be prepared.

This Finding of No Significant Impact (FONSI) is based on the attached FMCSA-prepared Environmental Assessment (EA). The EA has been determined to adequately and accurately discuss the environmental issues and impacts of the proposed action and to provide sufficient evidence and analysis for determining that an Environmental Impact Statement is not required.

12/16/03		Economist
Date	Environmental Reviewer	Title/Position

I have considered the information contained in the EA, which is the basis for this FONSI. Based on the information in the EA and this FONSI document, I agree that the proposed action, as described above and in the EA, will have no significant impact on the environment.

12/18/03		Administrator
Date	Responsible Official	Title/Position

255964

PUBLIC NOTICE – ALL INTERESTED PARTIES

FMCSA-2001-11060-35

"Certification of Safety Auditors, Safety Investigators, and Safety Inspectors" Interim Final Rule

Environmental Assessment

Federal Motor Carrier Safety Administration

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For further information, contact:
Charles Rombro, Team Leader, Regulatory Evaluation Team
Federal Motor Carrier Safety Administration
400 Seventh Street, SW
Washington, DC 20590
202-366-5615/Fax 202-493-0292

This Environmental Assessment evaluates the potential impacts of an interim final rule amending 49 CFR parts 350 and 385 (commonly referred to as the "Certification" rule). It was prepared in accordance with applicable environmental laws which ensure that environmental information is available to decision makers, regulatory agencies, and the public when Federal action is being considered. Combining thorough analysis of the proposed action with an examination of alternatives, including the No Action Alternative, this Environmental Assessment supports an inference that implementation of the Certification rule's requirements would have no significant adverse environmental consequences but would instead produce a positive, if minimal, impact on the affected environment.

October 2, 2003

FMCSA Environmental Assessment (EA)

"PUBLIC NOTICE – ALL INTERESTED PARTIES"

FMCSA'S

ENVIRONMENTAL ASSESSMENT

FOR

Certification of Safety Auditors, Safety

Investigators, and Safety Inspectors

Interim Final Rule

The FMCSA's environmental assessment (EA) was prepared in accordance with FMCSA's NEPA Implementing Procedures and Policy for Considering Environmental Impacts (FMCSA Order 5610.1) and complies with the National Environmental Policy Act of 1969 (Pub. L. 91-190) and the Council of Environmental Quality Regulations dated 28 November 1978 (40 CFR parts 1500-1508).

This environmental assessment serves as a concise public document to briefly provide sufficient evidence and analysis for determining the need to prepare an environmental impact statement or a finding of no significant impact (FONSI).

This environmental assessment concisely describes the proposed action, the need for the proposal, the alternatives, and the environmental impacts of the proposal and alternatives. This environmental assessment also contains a comparative analysis of the action and alternatives, a statement of the environmental significance of the preferred alternative, and a list of the agencies and persons consulted during EA preparation.

10/1/03	Charles Rumlio for SUSAN PANZITTA	Primary Author
Date	Preparer/Environmental Project Manager (as applicable)	Title/Position
10/1/03	Charles Rumlio	ECONOMIST
Date	Environmental Reviewer	Title/Position

In reaching my decision/recommendation on the FMCSA's proposed action, I have considered the information contained in this EA on the potential for environmental impacts.

10/1/03		Administrator
Date	Responsible Official	Title/Position

ENVIRONMENTAL ASSESSMENT FOR CERTIFICATION OF SAFETY AUDITORS, SAFETY INVESTIGATORS, AND SAFETY INSPECTORS INTERIM FINAL RULE

1. Purpose and Need for Action

1.1 Introduction

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. § 4321 *et seq.*), the Council on Environmental Quality (CEQ) implementing regulations (40 CFR § 1500 *et seq.*), and the U.S. Department of Transportation (DOT) Order 5610.1C (September 18, 1979, as amended July 13, 1982, and July 30, 1985), entitled *Procedures for Considering Environmental Impacts,* ensure that environmental information is available to decision makers, regulatory agencies, and the public before Federal action is taken. The Federal Motor Carrier Administration (FMCSA) continues to use the CEQ regulations and the DOT Order for implementing NEPA until it develops its own environmental procedures.

Pursuant to paragraph 4(d) of the DOT Order, entitled "Environmental Assessment (EA)," an EA or environmental impact statement (EIS) shall be prepared for actions normally categorically excluded, but which are likely to involve: (1) significant impacts on the environment; (2) substantial controversy on environmental grounds; (3) impacts which are more than minimal on properties protected by sections 4(f) and 106 of the National Historic Preservation Act of 1966 (16 U.S.C. § 470); or (4) inconsistencies with any Federal, State, or local law or administrative determination relating to the environment.

This EA was prepared for FMCSA for the purpose of analyzing the potential impacts associated with an interim final rule (IFR) amending parts 350 and 385 of the Federal Motor Carrier Safety Regulations (FMCSRs). The IFR, entitled Certification of Safety Auditors, Safety Investigators, and Safety Inspectors, published March 19, 2002 (67 FR 12275) with an effective date of June 17, 2002,[1] is designed to improve training and provide for the certification of individuals conducting motor carrier safety inspections, audits, and reviews. The amendments add a new Subpart C to part 385 entitled Certification of Safety Auditors, Safety Investigators, and Safety Inspectors. The rule establishes procedures to certify and maintain certification for auditors and investigators. It also requires certification for State or local government Motor Carrier Safety Assistance Program employees performing driver and vehicle roadside inspections, compliance reviews, and safety audits (see 49 CFR part 350).

On January 16, 2003, the U.S. Court of Appeals for the Ninth Circuit set aside the Certification rule and two other FMCSA rules that established application and safety monitoring procedures for Mexico-domiciled motor carriers seeking authority to operate in the United States. The court concluded that FMCSA failed to comply with statutory environmental impact analysis requirements in developing these regulations. Public

[1] The effective date was subsequently extended to July 17, 2002 (see 67 FR 41196).

Citizen v. DOT, 316 F.3d 1002 (9th Cir. 2003). The court determined that because the Certification rule did not fall within any of the existing DOT categorical exclusions, FMCSA acted arbitrarily and capriciously by failing to at least conduct an EA for the rule.

If on the basis of this EA, FMCSA determines that a full EIS is not required, the agency shall make a Finding of No Significant Impact briefly explaining why the proposal set forth in this IFR will not have significant environmental effects. See paragraph 5 of the DOT Order. However, if FMCSA determines that an EIS is required, an EIS shall be prepared for implementation of this proposed action (See paragraphs 4(b) and 7 of the DOT Order, and the CEQ regulations at 40 CFR § 1508.27 that require preparation of an EIS if an action is a major Federal action significantly affecting the environment). FMCSA also could determine to withdraw the action on the basis of anticipated environmental impacts.

1.2 Background

FMCSA was established within DOT on January 1, 2000, pursuant to the Motor Carrier Safety Improvement Act (MCSIA) of 1999 (Public Law No. 106-159). Formerly a part of the Federal Highway Administration (FHWA), FMCSA has as its primary mission the prevention of commercial motor vehicle-related fatalities and injuries. FMCSA activities contribute to ensuring safety in motor carrier operations through strong enforcement of safety regulations, targeting high-risk carriers and commercial motor vehicle drivers, improving safety information systems and commercial motor vehicle technologies, improving safety aspects of commercial motor vehicle equipment, and increasing safety awareness. FMCSA has no authority to regulate environmental aspects of motor carrier operations such as bus and truck emissions.

To assist in meeting these goals, FMCSA maintains a Federal grant program, the Motor Carrier Safety Assistance Program (MCSAP), which provides States with financial assistance for roadside inspections and other commercial motor vehicle safety programs. The MCSAP promotes detection and correction of safety deficiencies and unsafe motor carrier practices before they become contributing factors to crashes and hazardous materials incidents. The program also promotes the adoption and uniform enforcement by the States of safety rules, regulations, and standards compatible with the FMCSRs and Federal Hazardous Materials Regulations (HMRs).

Section 211 of MCSIA requires the Secretary of Transportation (Secretary) to complete a rulemaking to improve training and provide for the certification of motor carrier safety auditors to conduct safety inspection audits and reviews. The legislation also gives the Secretary oversight responsibility for the motor carrier auditors and investigators DOT certifies, including the authority to decertify them. (See section 211(a), 49 U.S.C. § 31148(b) and (c)).

FMCSA implemented section 211 by establishing three types of certification for Federal employees and participating State and local government MCSAP employees, as follows:

(1) certification to conduct safety audits, (2) certification to conduct compliance reviews, and (3) certification to conduct roadside inspections.

Pursuant to 49 U.S.C. § 31148(b)(2), the agency grandfathered FMCSA and MCSAP employees who were qualified to perform compliance reviews on December 9, 1999. Thus, these employees are not required to be certified under this IFR.

The IFR also grandfathered Federal, State, and local MCSAP employees who had not been hired, or had not yet completed their normal training, on December 9, 1999, but were fully trained and performing compliance reviews or roadside inspections before June 17, 2002. Grandfathered employees are treated as though they had been certified through the procedures set forth in the IFR. As such, they are also required to maintain their certification by completing the required training updates.

The following three classes of employees conduct compliance reviews, safety audits, and driver/vehicle roadside inspections: (1) investigators, (2) auditors, and (3) inspectors. FMCSA has developed criteria for certification for each of these categories (see section 1.2.1 of this EA). Potential employees would have to successfully fulfill requirements of initial training, which consists primarily of classroom instruction in existing facilities around the country. Successful completion of training is a condition of employment. MCSAP-funded employees must successfully complete comparable training established by FMCSA. Additionally, investigators, auditors, and inspectors would have to complete a prescribed number of compliance reviews, audits, and inspections within a fiscal year to become fully certified (see section 1.2.1). Inspections take place either in or at existing facilities (carrier locations, inspection facilities, and/or weigh stations), or by use of existing mobile equipment or roadside inspection stations.

Safety employee training and training requirements have been in effect within the DOT system for more than 20 years.[2] An FMCSA or MCSAP-funded employee who was qualified to perform job functions prior to June 17, 2002, would be considered certified under the rule and would maintain certification by competently performing routine duties. New employees, following completion of applicable training requirements, would also perform such duties in achieving and maintaining certification. Thus, an employee would meet initial certification and certification maintenance requirements without engaging in activities separate or distinct from those conducted within the normal course of business (the safety audit is a new management tool but would employ established safety activities; it is a modified compliance review). Certification of employees would not, in and of itself, increase the number of commercial motor vehicles on the Nation's roadways. Nor would it require construction of facilities, increase the number of commercial motor vehicle inspections, or change the way in which motor carriers perform their operations in interstate commerce.

It should be noted that the 2002 and 2003 DOT Appropriations Acts made issuance of the Certification rule a precondition to FMCSA's expenditure of funds on the processing of Mexico-domiciled motor carrier applications for authority to operate beyond the border

[2] Communication with FMCSA compliance and enforcement staff and training staff, June 18, 2003

commercial zones. Nevertheless, this EA does not attempt to analyze the prospective environmental impacts of Mexico-domiciled carriers operating in the United States. As noted above, certification in and of itself would not increase the number of commercial motor vehicles (Mexican or otherwise) on the Nation's roadways, require the construction of new facilities, increase the number of vehicle inspections, or change motor carrier operations.

Additionally, the environmental analysis of possible Mexican motor carrier operations beyond the border commercial zones is already being undertaken, in the form of a PEIS and General Conformity Evaluation, with respect to two rules establishing application and safety monitoring procedures for Mexico-domiciled motor carriers seeking authority to operate beyond the border zones. Unless the Ninth Circuit decision that required this analysis is reversed or the relevant terms of the 2002 DOT Appropriations Act are not extended, FMCSA cannot process applications of Mexico-domiciled motor carriers seeking operating authority beyond the border commercial zones until the PEIS and General Conformity Evaluation have been completed and considered by FMCSA. Thus, no operations of such carriers could take place as a result of issuance of the Certification rule.

FMCSA expects that tracking and recording the number of compliance reviews, audits, and inspections to ensure that an individual meets the requirements of performing the prescribed safety activities would be confirmed in and maintained through annual employee performance appraisals. Certification would be achieved and maintained through the proper accumulation and administrative accounting of the prescribed numbers of reviews, audits, and inspections. As employees achieved and maintained safety certification by performing their routine daily responsibilities, these activities would be embedded in and captured under a larger umbrella of currently established FMCSA practices and operations.

1.2.1 Certification Criteria

The following section details requirements for certification.[3] These requirements are on the FMCSA Web site and are not codified in the FMCSRs.

1.2.1.1 Motor Carrier Compliance Reviews

A **compliance review** is an on-site examination of a motor carrier's records and operations to determine whether the carrier meets the FMCSA safety fitness standard. It examines whether adequate safety management controls are in place to ensure acceptable compliance with applicable safety requirements to reduce the risks associated with the following:

- Alcohol and controlled substances use and testing violations;
- Commercial driver's license standard violations;
- Inadequate levels of financial responsibility;

[3] FMCSA Administrator Clapp Memorandum, December 18, 2002

- The use of unqualified drivers;
- Improper driving of commercial motor vehicles;
- Unsafe commercial motor vehicles operating on the highways;
- Failure to maintain crash registers and copies of crash reports;
- The use of fatigued drivers;
- Inadequate inspection, repair and maintenance of vehicles;
- Transportation of hazardous materials, driving and parking rule violations;
- Violations of hazardous materials regulations; and
- Motor vehicle crashes and hazardous materials incidents.[4]

A compliance review is an in-depth investigation of a motor carrier's safety management systems and compliance with Federal motor carrier safety and hazardous materials regulations. The investigation includes a review and sample of required safety-related records. It also includes documents and paperwork verification, witness interviews, and the gathering and collection of evidence in situations where significant or serious noncompliance is established.[5] The focus of a compliance review is the motor carrier's safety regulatory compliance, and enforcement for documented noncompliance. The result of a compliance review is a safety fitness rating for the carrier: Satisfactory, Conditional, or Unsatisfactory. A review may also trigger enforcement actions such as civil and criminal sanctions.

1.2.1.1.1 Basic Certification Requirements for Conducting Compliance Reviews

Federal Employees

- Successfully complete the FMCSA nine (9)-week Safety Investigator Academy. An academy provides a full daily schedule of classroom training courses with examinations. Potential employees would spend about two days of the nine weeks observing qualified, seasoned investigators.

and

- Satisfactorily participate in thirty (30) Level I inspections under the direction and control of a person certified to conduct Level I and V inspections. Level I inspections include a one-hour roadside vehicle and driver inspection. Level V inspections take place at a motor carrier facility (not at the roadside) and are limited to a vehicle inspection; a driver inspection is not included. (See detailed Level I and Level V inspection descriptions under inspector certification criteria in section 1.2.1.3.)

Non-Federal Employees

- Successfully complete the FMCSA North American Standard (see section 1.2.1.3 for description) Level I, General Hazardous Materials, and Compliance Review courses

and

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[4] FMCSA Internet Web site, www.fmcsa.dot.gov, July, 2003

[5] Written communication with FMCSA compliance and enforcement staff, July 7, 2003

- Satisfactorily participate in thirty (30) Level I **OR** Level V inspections under the direction and control of a person certified to conduct Level I and Level V inspections.

1.2.1.1.2 Maintenance of Certification for Safety Investigators

- Complete six (6) compliance reviews annually (for the purpose of certification, annually means every fiscal year)

and

- Complete thirty-two (32) Level I and/or Level V inspections annually

and

- Successfully complete any FMCSA-required refresher or in-service training

and

- The compliance reviews and Level I and/or Level V inspections must be conducted in accordance with the FMCSA Field Operations Training Manual (a how-to manual) and applicable policies.

1.2.1.2 Safety Audits

A **safety audit** provides educational and technical assistance to new entrant motor carriers (those registering for a DOT identification number). The safety audit is designed to assist new entrant carriers in developing effective safety management and improving their safety performance. As a nonenforcement contact with the carrier, the safety audit review of records is conducted to assist the carrier's development and refinement of safety management control systems. The safety audit does not result in a safety fitness rating; rather, it is designed as a pass/fail audit in assessing a carrier's safety performance and basic safety management controls.[6] Under section 210 of MCSIA, all new entrant motor carriers must receive a safety audit within 18 months after commencing operations. Failing this audit normally will result in revocation of the new entrant's authority to operate in interstate commerce.

1.2.1.2.1 Basic Certification Requirements for Conducting Safety Audits

<u>Federal and Non-Federal Employees</u>

- Successfully complete the FMCSA seven (7)-week Safety Auditor Academy. Potential employees would spend one to two days of the seven weeks observing qualified, seasoned inspectors.

and

- Satisfactorily participate in thirty (30) Level I or Level V inspections under the direction and control of a person certified to conduct Level I and Level V inspections

or

- Have certification to conduct motor carrier compliance reviews.

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[6] Written communication with FMCSA compliance and enforcement staff, July 7, 2003

1.2.1.2.2 Maintenance of Certification

- Meet the requirements to maintain certification to conduct motor carrier compliance reviews

or

- Complete twenty-four (24) safety audits annually
- Complete thirty-two (32) Level I and/or Level V inspections annually
- Successfully complete any FMCSA-required refresher or in-service training

and

- The safety audits and Level I and/or Level V vehicle inspections must be conducted in accordance with the FMCSA Field Operations Training Manual and applicable policies.

1.2.1.2 Level I and Level V Inspections

The FMCSA **roadside inspection program** consists of roadside inspections performed by qualified safety inspectors following the guidelines of the North American Standard, which was developed by the Commercial Vehicle Safety Alliance in cooperation with FMCSA. There are six levels of inspection. Inspection Levels I through V include a vehicle component, a driver component, or both. The Level VI inspection is for select radioactive materials.

A **roadside inspection** occurs when an inspector conducts an examination of individual commercial motor vehicles and drivers to determine if they are in compliance with the FMCSRs and/or HMRs.[7]

A **Level I North American Standard Inspection** includes an examination of driver's license, medical examiner's certificate and waiver, if applicable, driver's record of duty status as required, seat belt, vehicle inspection report, brake system, coupling devices, exhaust system, frame, fuel system, turn signals, brake lamps, tail lamps, headlamps, lamps on projecting loads, safe loading steering mechanism, suspension, tires, van and open-top trailer bodies, wheels and rims, windshield wipers, emergency exits on buses, and HM requirements, as applicable.[8]

A **Level V inspection** includes each of the vehicle inspection items specified under the North American Standard Inspection Level I without a driver present, and may be conducted at any location. Serious violations result in the issuance of vehicle out-of-service orders, and these violations must be corrected before the affected vehicle can return to service. Moving violations may also be recorded in conjunction with a roadside inspection.[9]

1.2.1.3.1 Basic Certification for Conducting Safety Inspections

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[7] FMCSA Internet Web site, www.fmcsa.dot.gov, July, 2003
[8] FMCSA Internet Web site, www.fmcsa.dot.gov, July, 2003
[9] FMCSA Internet Web site, www.fmcsa.dot.gov, July, 2003

Federal and Non-Federal Employees

- Successfully complete the FMCSA five (5)-week Inspector Academy. Potential employees would spend about two days of the five weeks observing qualified, seasoned inspectors.

or

- Successfully complete the FMCSA North American Standard Level I course

and

- Satisfactorily participate in thirty (30) Level I or Level V inspections under the direction and control of a person certified to conduct Level I and Level V inspections

and

- Meet the minimum documented quality levels in the Level I and Level V inspection process.

1.2.1.3.2 Maintenance of Certification

- Complete thirty-two (32) Level I and/or Level V inspections annually

and

- Successfully complete any FMCSA-required refresher or in-service training

and

- Meet the minimum documented quality levels in the Level I and Level V inspection process.

1.3 Purpose and Need for the Proposed Action

The purpose of this Proposed Action is for FMCSA to certify all individuals who conduct compliance reviews, safety audits, and driver and vehicle inspections. FMCSA also anticipates that implementation of the Proposed Action would promote more accurate and consistent compliance reviews, safety audits, and inspections by ensuring that these activities are conducted by qualified, trained individuals. These individuals will be certified by the relevant Federal, State, or local authorities. More accurate reviews should aid the government in identifying unsafe motor carriers and vehicles and allow for their rapid removal from the public roads, thereby improving public health and safety.

Section 210 of MCSIA required that all new entrant motor carriers receive a safety audit within 18 months after commencing operations and successfully demonstrate basic safety management controls. The significant increase in the number of mandatory safety reviews resulting from this requirement would be difficult to achieve without a substantial increase in the number of auditors. In order to ensure that these additional auditors would be qualified, Congress enacted section 211 of MCSIA, which directed FMCSA to issue a rulemaking to establish procedures to improve training and provide for certification of safety auditors.[10] Thus, FMCSA must ensure that all employees

[10] Communication with FMCSA legal staff, June 5, 2003, and communication with FMCSA compliance and enforcement staff, June 18, 2003

participating in the certification process meet Federal training, experience, and proficiency standards.

1.3.1 Purpose of the Proposed Action

Certification would support FMCSA's overall mission to prevent and reduce commercial motor vehicle-related fatalities and injuries, and ultimately contribute to ensuring safety in motor carrier operations. This would be accomplished because certification would ensure that all State, local, and FMCSA employees who conduct safety activities have the training and post-training experience necessary to accurately assess whether new entrants have the safety management systems in place and sufficient knowledge of the FMCSRs to operate safely. This training would be consistent for all employees throughout the United States, allowing for investigations, audits, and inspections of motor carriers to be carried out in as uniform a manner as possible. The Proposed Action would ensure that all investigators, auditors, and inspectors meet minimum Federal training, experience, and proficiency standards and would further ensure that employees maintain current knowledge of administrative, regulatory, and legal issues.

1.3.2 Need for the Proposed Action

The need for the Proposed Action is based on a series of studies showing that, compared with established counterparts, new motor carrier entrants are more likely to be placed out of service at roadside inspections, are less likely to comply with the FMCSRs and HMRs, and have a higher crash rate.[11] Given the anticipated large and growing number of new entrants, certification of auditors, investigators, and inspectors would support FMCSA's overall mission of preventing commercial motor vehicle-related fatalities and injuries in the United States. Therefore, FMCSA published an interim final rule on March 19, 2002, to implement the certification process.

[11]Communication with FMCSA analyst

2. Proposed Action and Alternatives

2.1 No Action Alternative

DOT and the Council on Environmental Quality NEPA regulations require that the No Action Alternative, which represents the status quo, be considered in the EA. The No Action Alternative would result in no additional rulemaking and no changes to the current FMCSA safety fitness regulations (49 CFR part 385). Under the No Action Alternative, FMCSA would withdraw the interim final rule published in the March 19, 2002, *Federal Register* (67 FR 12775), and no new procedures would be established for certification of and maintenance of certification for safety investigators, safety auditors, and safety inspectors. Although FMCSA would continue to enforce the current FMCSRs under the No Action Alternative, this alternative would hinder FMCSA in carrying out its mission to improve motor carrier safety.

Most significantly, the agency would not be able to certify new safety auditors, investigators, and inspectors, as required by section 211 of MCSIA. MCSIA mandated that only qualified individuals may perform safety audits, inspections, or reviews after December 31, 2002.[12] With no new rule promulgated, FMCSA and its State and local partners would be unable to hire new investigators, inspectors, and auditors. Fewer audits, inspections, and reviews would be conducted, resulting in less timely removal from operation of unsafe vehicles, drivers, and motor carriers, and thereby leading to more commercial vehicle-related crashes. In addition, it would be extremely difficult, if not impossible, to comply with the statutory requirement that all new entrant motor carriers be audited during their first 18 months of operation.

It is expected that the No Action Alternative would have negative impacts on the environment. The inability to hire new safety employees would reduce FMCSA's ability to expeditiously identify unsafe motor carriers, vehicles, and drivers and remove them from operation. This would result in more crashes and hazardous material releases.

2.2 Proposed Action – Certification Alternative

Under the Proposed Action, the Certification Alternative, FMCSA would certify all individuals who conduct compliance reviews, safety audits, and driver and vehicle inspections. No environmental impacts would be expected from the overall certification process because FMCSA is merely authorizing Federal, State, and local government employees to train employees to conduct safety audits, compliance reviews, and driver/vehicle inspections. Certification would not increase commercial vehicular traffic or change the way motor carriers operate throughout the United States; therefore, it is not anticipated that air quality, energy consumption, and public and worker health would be affected by implementation of this Proposed Action. Since all of the safety audits, compliance reviews, and driver/vehicle inspections would be performed at existing facilities and no new facilities would be constructed, we do not expect that sensitive

[12] The Secretary of Transportation has extended the cutoff date to December 31, 2003, as allowed under MCSIA.

environmental resources would be impacted. The proposed action is intended to promote more accurate compliance reviews, safety audits, and inspections by ensuring that these activities are conducted by highly trained individuals certified by Federal, State, or local governments. To the extent that the certification process enhances the government's ability to identify potentially unsafe carriers, drivers, or vehicles and remove them from the roads, it will have a positive impact on public health and safety.

Certification and maintenance of certification would be achieved through the activities and criteria described in the Background section (section 1.2) of this EA. As detailed, certification would be accomplished primarily through a series of classroom training courses collectively known as academies, conducted at existing facilities throughout the United States (FMCSA's National Training Center, other Federal buildings, State or county buildings, hotels, and various other multipurpose buildings). During initial training, investigator, auditor, and inspector recruits would attend nine, seven, and five-week academies, respectively. Academies offer instruction on critical elements of FMCSA operations, such as current safety regulations, hazardous materials, investigation techniques, enforcement procedures, driver and vehicle inspection, and computer file management. Two days of the multiple-week training would involve trainee observation of inspections conducted by seasoned FMCSA employees during the regular course of their daily duties at existing facilities or on existing roadways.

To become fully certified, upon successful completion of training a new employee would be required to perform a specified number of compliance reviews, audits, and/or inspections as part of routine job duties during the first year of employment. Similarly, maintenance of certification in subsequent years would involve performing a specified number of compliance reviews, audits, and/or inspections annually as part of routine job duties, along with attending refresher courses. The specified number of reviews, audits, and/or inspections to be performed for annual certification would be a small subset of the total number of reviews, audits, and/or inspections a safety employee would routinely complete in a year in the process of fulfilling his or her normal job responsibilities. For example, inspectors would be required to conduct thirty-two (32) inspections annually. Generally, an inspector performs twenty-eight (28) inspections in one week.

In achieving certification and continued maintenance of certification, employees would <u>not</u> perform any safety activities separate or distinct from routine daily job duties as part of FMCSA's normal, established operations. (The safety audit is a new management tool but would employ established safety activities; it is a modified compliance review.)

It is expected that the Certification Alternative would contribute to FMCSA's overall mission to increase motor carrier safety and achieve a greater reduction in fatalities and accidents.

2.3 Other Alternatives

2.3.1 Limited "Grandfather" Period Alternative

As discussed in the preamble to the interim final rule, FMCSA proposed establishing June 17, 2002, as the end of the grandfather period, although section 211 of MCSIA provides that Federal, State, and local employees qualified to perform compliance reviews on December 9, 1999, are not required to be certified under the rule. One alternative would be to adopt the interim final rule with a grandfather period end date of December 9, 1999. Under this alternative, all employees trained between December 9, 1999, and June 17, 2002, would immediately be ineligible to perform audits, inspections, or reviews until they had been retrained and certified under the final rule. This alternative would impose significant costs and burdens on FMCSA, and on State and local governments and their employees. At the same time, this alternative would provide very few safety benefits compared with the proposed action, since under the interim final rule employees hired between December 9, 1999, and June 17, 2002, would be required to meet FMCSA-established training, quality control, and periodic retraining requirements.

2.3.2 Codification of Requirements Alternative

FMCSA also considered the alternative of including the specific training and maintenance of certification requirements in the regulations rather than simply incorporating them by reference and making them available to the public. Under this alternative, FMCSA would publish the training and examination requirements in the *Federal Register* and codify these requirements in its regulations. Any subsequent changes to the training requirements would be accomplished through the notice and comment rulemaking process. This alternative would provide FMCSA with less flexibility to quickly modify course contents to match changes in the FMCSRs and HMRs, or to adapt other elements of the training process to changing circumstances. As a result, this alternative would make the certification program more inflexible and difficult to manage than the proposed action alternative.

3. Affected Environment

Generally, an action that involves changes to operational activities or construction of facilities would consider resource areas such as land use, visual, cultural, and aesthetic resources, geology and soils, water resources and hydrology, biological and ecological resources, and air quality. Impacts on infrastructure, transportation, energy consumption, waste generation, noise, human health and worker safety, socioeconomics, and environmental justice would also potentially be considered. As the safety employee certification action would not increase commercial vehicular traffic across the United States, would not alter activities that safety employees normally perform, and would not require construction of new or expanded facilities, no significant environmental impacts in these conventional analysis areas are anticipated. Activities to satisfy safety certification requirements under the proposed action would be carried out as part of

employees' routine responsibilities. These certification activities would be embedded in and captured under a larger umbrella of established FMCSA practices (a continuation of long-term practices conducted by DOT's Federal Highway Administration) that recognize and comply with all applicable environmental laws and regulations.

Because environmental impacts to most of the resource areas mentioned above are not expected, this EA considers only a few of those areas to assist in framing the impact analysis.

3.1 Land Use

FACILITIES

Training Facilities
Since training would be a component of the Proposed Action and Alternatives, this EA considers the environment in which training would occur. No construction of new training facilities or buildings would take place for the purpose of certification of employees who conduct investigations, audits, or inspections. FMCSA has established academies to accommodate potential new employees who would conduct safety activities. This classroom training for the Proposed Action would be conducted at existing facilities, primarily at the FMCSA's National Training Center in Virginia but also at existing Federal, State, or county buildings, hotels, and various other multipurpose buildings throughout the United States.[13] Refresher courses required for maintenance of certification would also be conducted at existing classroom facilities.

Inspection Facilities
Since performing vehicle and driver inspections would be elements of the Proposed Action, this EA considers the environment in which inspections would be performed. No construction of new inspection facilities would take place for the purpose of certification of employees who conduct safety inspections. There are twenty-nine (29) existing inspection facility sites used by Federal and State inspectors and staff. All of these sites, including State inspection facilities, U.S. Customs compounds, and State and Federal leased space, are located along the U.S.-Mexico border.[14] Inspections would also be carried out at existing motor carrier locations throughout the United States or at the roadside. There are approximately 643,931 registered carriers in the United States, Canada, and Mexico. About 13,125 Mexico-domiciled carriers and 20,342 Canadian carriers are registered with FMCSA, while U.S.-domiciled registered carriers number approximately 610,000. FMCSA estimates that approximately forty thousand (40,000) new U.S. and Canadian motor carrier entrants will enter the FMCSA system each year.

United States Roadway System

Commercial motor carriers use an extensive system of established highways and roadways (including interstates, freeways, expressways, principal arterials, minor

[13] Communication with FMCSA training staff, June 25, 2003
[14] Written communication with FMCSA compliance and enforcement staff, July 7, 2003

arterials, and two- and four-lane roadways). Both roadside and off-road inspections would be performed, by State officers under FMCSA's Motor Carrier Safety Assistance Program, along the existing extensive system of roadways throughout the United States. These inspections would be counted and evaluated for the purpose of employee certification. No new roadways would be constructed for the purpose of certifying employees who perform inspections. General highway corridors are oriented predominantly east-west or north-south and traverse rural and urban areas.[15] Highway corridors also traverse national and State parks, wetlands, and waterways and nature preserves.[16] In the course of employee certification, inspections would also be conducted using mobile equipment or mobile stations at any given site along the existing extensive U.S. system of roadways.[17] No additional equipment or stations would be procured for the purpose of certification of employees who conduct inspections.

FMCSA Office Facilities

With regard to employee review of motor carrier safety records, this EA considers, for the Proposed Action and Alternatives, the environment in which these activities would be performed. No construction of new office facilities would take place for the purpose of certifying employees who review carrier safety records. FMCSA employees would examine motor carrier records at the carriers' offices, and occasionally at existing FMCSA offices throughout the United States, as the employees performed their routine daily work and simultaneously achieved certification requirements.

3.2 Air Quality

Air quality is technically defined as the concentration of air pollutants present within the air mass of a region and is measured in parts per million (ppm) or micrograms per cubic meter ($\mu g/m^3$). Air pollutants are a significant cause of concern with respect to public health and welfare. Public health refers to the physiological effect on a human being, while public welfare refers to such concerns as property damage and aesthetic effects. In response to both concerns, Federal regulations have been developed for six criteria pollutants identified by EPA. These pollutants are considered harmful to public health and the environment. The six criteria pollutants that EPA established under the National Ambient Air Quality Standards (NAAQS) are carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO_2), ozone (O_3), sulfur dioxide (SO_2), and particulate matter (PM). Nitrogen dioxide reacts in the atmosphere over the course of several hours and is often referred to simply as nitrogen oxides or NO_X.

3.3 Noise

Sound, an element of all human and natural environments, becomes noise when it is unwanted, unnecessary, or does not convey useful information. Noise is further defined

[15] FMCSA, Programmatic Environmental Assessment for Three Rules, January 2002, p. 3-1
[16] FMCSA, Programmatic Environmental Assessment for Three Rules, January 2002, p. 3-2
[17] Communication with FMCSA compliance and enforcement staff, June 18, 2003

as sound that disrupts normal activities or diminishes the quality of the surrounding environment.

Generally, sound is measured in decibels (dB), a logarithmic scale that condenses the wide range of sounds the human ear perceives. Using this scale, an increase of 3 dB represents a doubling of sound energy, but this difference is barely detectable to the human ear. An increase in sound energy by 10 dB is approximately equivalent to a doubling in perceived loudness (USAF 1978). An "A-weighted" scale, termed dBA, places more emphasis on some frequencies while deemphasizing others, because the human hearing range is more sensitive to certain frequencies.

3.4 Public Safety and Health

The primary mission of FMCSA is to save lives and reduce injuries by preventing bus- and truck-related crashes. FMCSA establishes standards for motor carrier operations, commercial motor vehicles (CMV), and drivers to ensure the public safety on U.S. roadways. The agency enforces both safety and hazardous materials standards and monitors CMV operations that may affect the safety of truck drivers and other travelers. FMCSA programs ensure safety in commercial vehicle operations by targeting high-risk carriers and drivers, improving safety information systems and CMV technologies, strengthening vehicle equipment and operating standards, and increasing safety awareness.

3.5 Water Quality

The water resources of the United States include groundwater and surface water. Groundwater is found beneath the surface of the earth. Sources of groundwater include rainfall and surface waters such as lakes, rivers, streams, and wetlands. These waters penetrate and move through the soil to the water table.

Much of the Nation's drinking water is supplied from groundwater aquifers. Groundwater is an important source of water supply for municipalities, agriculture, and industry. Western and Midwestern areas are generally much more dependent on groundwater than are other areas of the U.S. Many of these States depend on groundwater for more than 50 percent of their drinking water needs.

3.6 Socioeconomics

Socioeconomics involves the social and economic factors in the human environment, including demographics (population and employment), income, and housing for the major U.S. geographic regions. External events, such as changes in public policy, have the potential to directly or indirectly affect socioeconomic conditions. Factors such as adverse health effects from poor air quality conditions have social consequences that affect the quality of life enjoyed by residents in a community. Economic consequences, such as increases in healthcare costs, affect business activities, market structure, and circulation of goods within and between communities. The size, distribution, and

composition of a community's population will be affected by demographic consequences such as out-migration of firms and labor due to increased business costs.

4. Environmental Consequences

This section describes the potential environmental consequences of the Proposed Action and Alternatives. As explained below, neither the Proposed Action nor any of the alternatives is expected to have a potentially deleterious effect on the environment, while the Proposed Action is expected to produce beneficial, albeit minimal, environmental impacts. Because none of the alternatives is expected to have a significant impact on the environment, we have not repeated the discussion of impact areas for each alternative. Instead, the EA focuses on the impacts of the Proposed Action, with a much briefer discussion of the impacts of the alternatives.

4.1 No Action Alternative

Although the No Action Alternative would not result in any impact on the affected environment or potentially sensitive resource areas beyond those impacts experienced as a result of current normal operations of safety employees, the inability to hire certified safety employees could diminish the ability of FMCSA and its State and local partners to identify unsafe motor carriers, vehicles, and drivers. This would have an adverse impact on public safety and be likely to hinder FMCSA's achievement of further reductions in commercial vehicle-related accidents and fatalities.

4.2 Proposed Action – Certification Alternative

The Proposed Action, the Certification Alternative, would not increase commercial vehicular traffic, would not require the construction of new facilities, and would not in and of itself cause more inspections to be performed. In achieving certification, employees would not perform activities separate and distinct from normal operations. The proposed action would help ensure that newly hired investigators, auditors, and inspectors are properly trained, and that all investigators, auditors, and inspectors meet quality control and continuing education requirements. The Proposed Action imposes no substantive requirements affecting motor vehicle operation or the number of commercial motor vehicles traversing U.S. highways. The requirements of this rule would not affect the number of compliance reviews, safety audits, or driver and vehicle inspections. The Proposed Action also would have no impact on the elements of these reviews, audits, or inspections or the manner in which they are conducted. For these reasons, most conventional analysis areas were not considered, as there would be no significant adverse impacts on visual, cultural, and aesthetic resources, geology and soils, water resources and hydrology, and biological and ecological resources. Similarly, there would be no significant negative impacts on infrastructure, transportation, energy consumption, waste generation, human health and worker safety, socioeconomics, and environmental justice concerns.

Our analysis further indicated that the Proposed Action, if implemented, will have no discernible impact in the following areas of environmental concern:

4.2.1 Land Use

No construction of new facilities for training, for performing inspections, or for conducting records reviews would occur. Similarly, no new roadways would be constructed for the purpose of conducting inspections. Consequently, there would be no significant adverse impacts on land use.

4.2.2 Air Quality

Certification of safety employees would not directly increase commercial vehicular traffic; therefore, no additional significant negative air emissions would result. Certification would not, in and of itself, cause an increase in the total number of vehicle inspections conducted throughout the United States, and thus would not significantly increase adverse air emissions. As normal operations of safety activities would not be altered, no significant adverse impacts on air quality around the country would occur.

In order to implement NAAQS for specific pollutants, the Clean Air Act (CAA) requires each State to adopt and submit for EPA approval a State Implementation Plan (SIP) (42 U.S.C. 7410(a)(1)). Each SIP must include emissions limitations and other measures necessary to bring nonattainment areas into attainment, maintain air quality in attainment areas, and otherwise comply with the NAAQS. To ensure these goals are met, the CAA contains a conformity requirement, which states that no Federal agency may engage in, support in any way or provide financial assistance for, license or permit, or approve any activity that does not conform to an SIP (42 U.S.C. 7506(c)(1)). To conform to an SIP, a Federal action must be consistent with the purposes of the SIP and must not: (1) cause or contribute to any new violation of an applicable air quality standard; (2) increase the frequency or severity of an existing violation; or (3) delay timely attainment of any applicable standard, interim-reduction requirement, or other milestone. EPA implemented regulations at 40 CFR parts 6, 51, and 93 to assist Federal agencies in complying with the conformity requirement. The requirements provide for both transportation conformity analysis (applicable to highways and mass transit) and general conformity analysis (applicable to everything else). EPA's general conformity requirements at 40 CFR parts 51 and 93 apply to all FMCSA actions.

With respect to general conformity, all Federal actions are covered unless otherwise exempt. Under the regulations at 40 CFR part 93, Federal agencies need not perform conformity determinations as to certain types or categories of actions, even if the actions may or will cause emissions in nonattainment areas. Among other things, Federal agencies need not perform conformity determinations: (1) when the total of direct and indirect emissions of an agency action is below stated threshold levels for specified pollutants; (2) when the action in question is listed by the EPA as an action which would result in no emissions increase or an increase in emissions that is clearly de minimis. Also included on this list are actions that constitute rulemaking. Finally, where only

indirect emissions result from an agency's Proposed Action, no conformity determination need be conducted unless the emissions are caused by the agency's Proposed Action, are under the agency's practical control, and are subject to the agency's continuing program responsibility.

FMCSA determined that a Clean Air Act conformity analysis is not required under EPA's general conformity guidelines for the Proposed Action because no air emissions increases would occur. As stated above, the Proposed Action would not result in an increase in vehicle travel, a shift in the type of vehicles used, or any other change that would have an impact on air quality. In addition, even if the Proposed Action did result in emissions increases, and if these increases were more than de minimis, no conformity analysis would be required because such emissions could only be indirect emissions and are not caused by the agency's Proposed Action, are not under the agency's practical control, and are not subject to the agency's continuing program responsibility.

4.2.3 Noise

Certification of safety employees would not require the construction of new U.S. roadways or new training, inspection, or office facilities, and would not directly increase either the total of vehicle inspections performed or the volume of commercial vehicular traffic. As the certification activities would not alter the normal operations of safety activities, they would have no significant adverse impact on noise levels.

4.2.4 Traffic and Congestion

The Proposed Action would not measurably change the number of vehicles operated on U.S. highways. Improving the quality of compliance reviews and safety audits could increase the likelihood that potentially unsafe carriers are identified and their vehicles removed from the highways. However, freight and passengers transported in these vehicles would be diverted to other motor carriers, resulting in a negligible impact on congestion levels. Although this action could also result in more thorough vehicle inspections and more vehicles placed out of service, these vehicles would be removed from service only temporarily, until necessary repairs could be made.

The Proposed Action would have no effect on the number of vehicles inspected or the length of time necessary to complete the inspections. Therefore, there would be no impact on traffic congestion related to the stoppage of vehicles as part of the inspection process.

4.2.5 Public Safety and Health

The Proposed Action is intended to promote more accurate compliance reviews, safety audits, and inspections by ensuring that these activities are conducted by highly trained individuals certified by the Federal, State or local governments. To the extent that the certification process enhanced the government's ability to identify potentially unsafe

carriers or vehicles and remove them from the roads, it would have a positive impact on public safety and health.

4.2.7 Water Quality

Because the Proposed Action would not measurably affect the number of vehicles being operated or the length of time their engines would be running while undergoing inspection, there would be no measurable impact on water quality.

4.2.8 Socioeconomics

Because the Proposed Action would not measurably affect the number of motor carriers granted authority to operate in the United States and the number of motor vehicles operated, there would be no measurable impact on socioeconomics.

4.3 Other Alternatives

4.3.1 Limited "Grandfather" Period Alternative

Adopting a different grandfather date would not change the substantive requirements for motor carrier operations, nor would it change the number of compliance reviews, safety audits, or driver and vehicle inspections or the manner in which these activities are conducted. Therefore, this alternative would not result in any measurable impact on traffic congestion, public safety, air quality, water quality, and socioeconomic conditions.

4.3.2 Codification of Requirements Alternative

Codifying specific training and quality control requirements in the regulations also would not impose any new substantive requirements on motor carrier operations. Codification would not change the number of compliance reviews, safety audits, or driver and vehicle inspections, or the manner in which these activities are conducted. Therefore, this alternative would not result in any measurable impact on traffic congestion, public safety, air quality, water quality, and socioeconomic conditions.

Comparison of Proposed Action and Alternatives

Based on this analysis, FMCSA has concluded that the provisions of the safety auditor certification interim final rule would not produce any significant adverse impact on the environment. Certification of FMCSA and State safety employees would result in a minimal overall net positive impact on the environment.

5. List of Preparers

Susan Panzitta, Econometrica, Inc. Primary Author. More than 15 years of environmental analysis experience.

Charles Rombro, FMCSA, Team Leader, Regulatory Evaluation Team. Contract Manager and reviewer. Fifteen years of government experience, 2 years of environmental experience.

Michael Falk, FMCSA, Trial Attorney. Twenty-nine years of government experience, 3 years of environmental experience.

Retta Besse, FMCSA, Chief, Professional Development and Training Division. Thirty-five years of government experience, less than 1 year of environmental experience.

Mary Pat Woodman, FMCSA, Chief, Enforcement and Compliance Division. Twenty-seven years of government experience, less than 1 year of environmental experience.

John Grimm, FMCSA, Director, Office of Safety Programs. Nineteen years of Federal Government service, more than 30 years of environmental experience.

Mark Oesterle, FMCSA, Team Leader, Technical Training Team. Thirteen years of government service, less than 1 year of environmental experience.

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